STATE OF MICHIGAN

COURT OF APPEALS

SHELLY RICE,

Plaintiff-Appellant,

v

RICKY LEROY RICE,

Defendant-Appellee.

UNPUBLISHED
July 17, 1998

No. 205446
Jackson Circuit Court
LC No. 96-076912 DM

Before: Holbrook, Jr., P.J., and Gribbs and R.J. Danhof*, JJ.

PER CURIAM.

Plaintiff appeals as of right from that portion of a judgment of divorce that awarded plaintiff and defendant joint physical and legal custody of the parties' two minor children, James Phillip Rice and Ashley Megan Rice.[1] We affirm.

I

Plaintiff argues on appeal that the trial court erred in finding that an established custodial environment existed with both parties, rather than with her alone. We disagree. "Whether a[n established] custodial environment exists is a question of fact, which the trial court must address before ruling on the child's best interests." *Overall v Overall*, 203 Mich App 450, 455; 512 NW2d 851 (1994). MCL 722.23; MSA 25.313(3) states that an established custodial environment

> is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall be considered.

An established custodial environment includes both "physical and psychological [components,] in which the relationship between the custodian and the child is marked by qualities of security, stability and permanence." *Baker v Baker*, 411 Mich 567, 579; 309 NW2d 532 (1981). This Court must uphold

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

a trial court's findings of fact in a custody case unless the court's findings were against the great weight of the evidence. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871, 876; 526 NW2d 889 (1994).

Evidence was presented at trial establishing that plaintiff and defendant shared the day-to-day responsibilities associated with child-rearing, including maintenance of the household, attending to the childrens' school responsibilities and extra-curricular activities, purchasing food and clothing for the children, and attending to the childrens' medical care. Further, the evidence showed that even though plaintiff was granted temporary custody of the children throughout their final separation, defendant continued to care for the children, albeit on a restricted basis due to the temporary custody arrangement.

To the extent that evidence presented by an investigator working out of the office of the Jackson County Friend of the Court and from a contract social worker employed by Catholic Social Service of Jackson indicated that an established custodial environment existed solely with plaintiff, we believe the record to show that the validity of those findings were suspect. As the trial court observed, both of these witnesses admitted that they were under some time pressure when preparing their reports. As a result, both admitted to having relied heavily on statements made by plaintiff when drawing their conclusions. However, based in large part on the results of objective psychological tests administered to plaintiff by Janice Lazar, Ph.D.,[2] the trial court concluded that such reliance rendered the conclusions reached by the two to be questionable. Given the results of Dr. Lazar's tests, and acknowledging the trial court's unique perspective on the witnesses testifying at trial, *Harper v Harper*, 199 Mich App 409, 410; 502 NW2d 731 (1993); MCR 2.613(C), we do not believe that the trial court erred when it concluded that the opinions of the two witnesses were questionable. We conclude, therefore, that the trial court's finding with regard to the existence of an established custodial environment with both parents was not contrary to the great weight of the evidence.

On a related matter, plaintiff also argues that the trial court erred when, with respect to other matters, it discounted the conclusions and opinions offered by the Friend of the Court investigator and Catholic Social Services social worker, and instead placed too much weight on the deposition testimony of Dr. Lazar. We find this argument to be without merit. As just noted, the trial court did not err when it found the conclusions and recommendations submitted by the investigator and the social worker to be unreliable. Further, as this Court observed in *Truitt v Truitt*, 172 Mich App 38, 42; 431 NW2d 454 (1988), while "[t]he trial court may consider a friend of the court's report, [ultimately it] . . . must reach its own conclusions." Accord *Duperon v Duperon*, 175 Mich App 77, 79; 437 NW2d 318 (1989).

II

Next, plaintiff argues that the trial court committed clear legal error by requiring her to reside in the Concord school district, thereby suggesting that her custody award was dependent upon her location and residency. To support her argument, plaintiff makes note of this Court's holding in *Dehring v Dehring*, 220 Mich App 163; 559 NW2d 59 (1996), that, in contrast to an interstate move, an *intrastate* change of domicile does not require any pre-approval by the trial court, *id.* at 166-167,

nor does it qualify as "'proper cause shown or … change of circumstances' sufficient to allow the court to reconsider its custody decision." *Id.* at 167, quoting MCL 722.27(1)(c); MSA 25.312(7)(1)(c).

Although plaintiff correctly cites the law should a petition for a change of custody be filed as a consequence of her moving somewhere else within Michigan, we find that her argument is premature, given that such a situation has not yet arisen. Moreover, although the record reveals that the trial court expressed a preference that plaintiff remain in the area, there is no indication that the trial court would actually change its custody disposition should plaintiff decide to move outside the Concord school district. Indeed in its opinion, the trial court specifically indicated that it was the matter of equity in the marital home that was "subject" to plaintiff's remaining in the Concord school district.

III

Plaintiff also argues that the trial court committed reversible error by conducting in camera interviews with her son from a previous relationship and defendant's three boys from a previous marriage. Although we agree that the procedure followed was error, we do not believe that reversal of the custody order is required. Plaintiff notes that those children were not subject to this custody dispute, and they were not subject to cross-examination at trial. As this Court observed in *In re Crowder*, 143 Mich App 666, 668-669; 373 NW2d 180 (1985), "A limited exception to the right of parties to be present during trial has arisen in child custody cases: the court may question a minor *in camera* as to the minor's preference for a custodian." In the case at hand, the record indicates that the matters addressed in the interviews of the four children went beyond this limited area to include matters regarding facts that were in dispute. This was error on the part of the trial court. *Id.* at 669; *Burghdoff v Burghdoff*, 66 Mich App 608, 612-613; 239 NW2d 679 (1976). However, we find no reason to reverse or remand on this issue because plaintiff has failed to demonstrate prejudice. Additionally, relief is precluded because the record establishes that while plaintiff was aware of the court's intent to interview the children, she raised no objection to the procedure. See *In re Crowder*, *supra* at 670.

IV

Next, plaintiff claims that when examining the statutory best interest factors set forth in MCL 722.23; MSA 25.313(3), the trial court erred when it found that plaintiff and defendant were equal with respect to factor (k), the domestic violence factor. After carefully reviewing the evidence, we conclude that the trial court's finding is not against the great weight of the evidence. MCL 722.28; MSA 25.312(8); *Fletcher*, *supra*, 447 Mich at 876. Testifying on plaintiff's behalf, several witnesses indicated that they had observed bruises and other marks on plaintiff, and that plaintiff had told them that they had been inflicted by defendant. Conversely, there was also testimony that: (1) plaintiff had twice been involved in a physical altercation with defendant's first wife, and that both of these fights had occurred when the children were present; (2) plaintiff had twice struck one of defendant's sons by his first wife; and (3) that plaintiff had once struck defendant with a car. Accordingly, we conclude that the record supports the trial court's conclusion that both parties shared responsibility for the existence of domestic violence in the household.

V

Finally, plaintiff argues that the trial court abused its discretion in awarding joint physical custody of the two children to plaintiff and defendant. We disagree. This Court reviews a trial court's ruling regarding custody for an abuse of discretion. MCL 722.28; MSA 25.312(8); *Fletcher, supra*, 447 Mich at 879-880. When considering whether to award joint custody to the parties, "[t]he trial court must determine whether joint custody is in the best interest of the child by considering the factors enumerated in MCL 722.23; MSA 25.312(3), and by considering whether 'the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.'" *Wellman v Wellman*, 203 Mich App 277, 279; 512 NW2d 68 (1994), quoting MCL 722.26a(1)(b); MSA 25.312(6a)(1)(b).

Plaintiff asserts that because she and defendant argue a lot and are unable to cooperate with one another, an award of joint custody was improper. We are unpersuaded by this argument. As noted in *Nielsen v Nielsen*, 163 Mich App 430, 434; 415 NW2d 6 (1987), whether the parties can cooperate is not the sole factor guiding a trial court's decision on the propriety of awarding joint custody. Further, with regard to the issue of joint custody, the act of cooperation focuses on the parties' ability to "agree on basic child-rearing issues." *Id.* Accord, *Wellman, supra* at 280. Although the record contains evidence of disputes between plaintiff and defendant, there is no indication that those disputes involved child-rearing issues. *Id.* In fact, plaintiff admitted at trial that both she and defendant contributed to the childrens' care, and that she and defendant were able to cooperate with visitation and child-care arrangements throughout their separation and during the pendency of the divorce.

Plaintiff also claims that the court erred by failing to place its findings on the record as to why it awarded the parties joint custody. MCL 722.26a(1); MSA 25.312(6a)(1) states that "[a]t the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request." Throughout this case, plaintiff steadfastly sought sole custody of the two minor children. Initially, however, defendant sought an award of joint custody. However, as of the close of the trial, defendant's position[3] was that he should be awarded sole custody of the children. Therefore, because at the time the judge was to render his decision neither party was requesting joint custody, the trial court was not required to place its findings with regard to the award of joint custody on the record. In any event, we note that the record indicates that the trial court did carefully and thoroughly consider each of the best interests factors, and did place specific findings, relative thereto, on the record before awarding the parties joint custody.[4]

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Roman S. Gribbs
/s/ Robert J. Danhof

[1] Both plaintiff and defendant are the natural parents of children born during the course of previous relationships. The custody arrangements for these children are not part of this appeal.

[2] The record indicates that Dr. Lazar's Ph.D. is in counseling psychology. Dr. Lazar administered the Minnesota Multiphasic Personality Index-2 (hereinafter "MMPI-2") and the Parenting Stress Inventory (hereinafter "PSI") tests to both plaintiff and defendant. Both the MMPI-2 and the PSI include a validity scale, which is designed to help the test administrator determine if the subject of the test has answered the questions truthfully. As Dr. Lazar indicated in her deposition testimony, a validity scale helps the test administrator "assess whether a person is . . . trying to look good or trying to look bad and to what degree." In other words, Dr. Lazar indicated that the validity scale determines whether or not the subject was "[b]asically lying" when completing the test. Dr. Lazar stated that plaintiff's MMPI-2 results indicated that when taking the test, "[s]he attempted to look good . . . and create a favorable impression and she did this to such an extent that it invalidated the test." Plaintiff's PSI test results also indicated that she did not accurately respond to the questions posed.

[3] Defendant did testify that he believed that the parties should share custody. Further, in his trial brief, defendant proposed "[t]hat the parties be awarded joint custody of the children with him being granted their physical custody." However, in his final argument, defendant argued that he should be awarded sole custody of the children, asserting that the children would be placed "in harm's way" if joint custody were awarded.

[4] Given that we have found no grounds for reversal or remand, we find it unnecessary to address plaintiff's argument concerning assignment to another trial judge.